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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LOREAN BARRERA, On Behalf of
Herself and All Others Similarly
Situating and the General Public,

Plaintiff,

v.

PHARMAVITE, LLC, a California
limited liability company,

Defendant.

Case No.: CV-11-4153 (AGrx)
CLASS ACTION

SECOND AMENDED CLASS ACTION
COMPLAINT FOR:

1. VIOLATION OF THE
CONSUMERS LEGAL REMEDIES
ACT, Civil Code §1750 *et seq.*;
2. VIOLATION OF THE UNFAIR
COMPETITION LAW, Business and
Professions Code §17200 *et seq.*; and
3. BREACH OF EXPRESS
WARRANTY.

DEMAND FOR JURY TRIAL

1 Plaintiff Lorean Barrera (“Plaintiff”), by and through her attorneys, brings this
 2 action on behalf of herself and all others similarly situated against Defendant
 3 Pharmavite, LLC (“Pharmavite” or “Defendant”), and alleges as follows:

4 **NATURE OF ACTION**

5 1. Defendant manufactures, markets, sells and distributes the Nature
 6 Made[®] TripleFlex line of joint health dietary supplements.¹ Through an extensive,
 7 widespread, comprehensive and uniform nationwide marketing campaign, Defendant
 8 claims that its TripleFlex products will help improve joint mobility, increase joint
 9 flexibility and reduce joint pain for all joints in the human body, for adults of all ages
 10 and for all stages of joint disease. For example, on each and every TripleFlex product
 11 label and/or package, Defendant prominently states that TripleFlex, with its “Triple-
 12 Ingredient” formula, helps improve joint “comfort, mobility and flexibility” by
 13 “replenishing key nutrients for daily maintenance and renewal of joints” (hereafter
 14 referred to as the “joint renewal and rejuvenation” representations). However, the
 15 TripleFlex products do not support joint renewal and rejuvenation. Clinical cause and
 16 effect studies have found no causative link between the ingredients in the TripleFlex
 17 products and the prevention or lessening of joint degeneration or relief from joint
 18 discomfort. Defendant also does not have competent and reliable scientific evidence
 19 to support its representations. Defendant’s representations are false, misleading, and
 20 reasonably likely to deceive the public.

21 2. Despite the deceptive nature of Defendant’s representations, Defendant
 22 conveyed and continues to convey its deceptive joint renewal and rejuvenation
 23 representations through a variety of media, including in its print, radio and television
 24 advertisements, as well as on its Product packages and labeling, website and online
 25 promotional materials. The only reason a consumer would purchase the TripleFlex

26 ¹ The TripleFlex products include: (1) TripleFlex Triple Strength; (2) TripleFlex 50+;
 27 (3) TripleFlex Triple Strength LSG; and (4) TripleFlex Double Strength (collectively,
 28 “TripleFlex” or “the Products”).

1 products is to obtain the advertised joint health benefits, which TripleFlex does not
2 provide.

3 3. Defendant's marketing and advertising campaign is designed to cause
4 consumers to buy TripleFlex. Defendant's deceptive marketing and advertising
5 campaign has succeeded. Estimated sales of joint dietary supplements including
6 TripleFlex, approached \$820 million in 2006.²

7 4. Plaintiff brings this action on behalf of herself and other similarly
8 situated consumers in the United States to halt the dissemination of this false and
9 misleading advertising message, correct the false and misleading perception it has
10 created in the minds of consumers, and obtain redress for those who have purchased
11 TripleFlex products. Plaintiff alleges violations of the Consumers Legal Remedies
12 Act, the Unfair Competition Law, and Breach of Express Warranty created by
13 Defendant's advertising, including false labeling.

14 **JURISDICTION AND VENUE**

15 5. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2).
16 The matter in controversy, exclusive of interest and costs, exceeds the sum or value of
17 \$5,000,000 and is a class action in which there are in excess of 100 class members
18 and the members of the Class are citizens of a state different from Defendant.

19 6. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that many
20 of the acts and transactions giving rise to the alleged claims occurred in this district
21 and because Defendant:

- 22 • is headquartered in this district;
- 23 • is authorized to conduct business in this district and has
- 24 intentionally availed itself of the laws and markets within this district through the
- 25 promotion, marketing, distribution, and sale of its Products in this district; and
- 26

27 ² 2007 Nutrition Industry Overview, Nutrition Business J., *available at*
28 <http://newhope360.com/managing-your-business/2007-nutrition-industry-overview>
(last visited Oct. 3, 2011).

- does substantial business in this district.

PARTIES

7. Plaintiff Lorean Barrera resides in El Centro, California. Within the last year, Plaintiff Barrera was exposed to and saw Defendant's representations by reading the front, back and sides of the TripleFlex Triple Strength label at a third-party retailer in El Centro, California. Plaintiff Barrera purchased the TripleFlex Triple Strength product to relieve her joint pain and in so doing relied on every single one of Defendant's renewal and rejuvenation representations. The TripleFlex Triple Strength product Plaintiff purchased and took as directed did not help improve joint "comfort, mobility, or flexibility" as represented. As a result, Plaintiff suffered injury in fact and lost money. She would not have purchased the product had she known it did not provide the advertised joint health benefits.

8. Defendant Pharmavite, LLC, is a limited liability company organized and existing under the laws of the State of California. Defendant's headquarters is at 8510 Balboa Boulevard, Mission Hills, California 91325. From its headquarters in Mission Hills, California, Defendant manufactures, distributes, markets and sells the TripleFlex products to consumers nationwide.

FACTUAL ALLEGATIONS

The TripleFlex Products

9. Defendant is the global leader in the dietary supplement industry. It manufactures, distributes, markets and sells the Nature Made[®] line of dietary supplements. This lawsuit concerns four of those products: (1) TripleFlex Triple Strength; (2) TripleFlex 50+; (3) TripleFlex Triple Strength LSG; and (4) TripleFlex Double Strength. Defendant began manufacturing, marketing and selling the TripleFlex products nationwide in 2003.

10. The TripleFlex products are sold in virtually every major food, drug, and mass retail outlet in the country, including, but not limited to: Costco, Walgreens,

Sav-on and Target. The Products are available in 60, 120, and 150 count bottles, retailing for approximately \$15-\$40. The following are screen shots of the Products:



11. Since the Products' launch, Defendant has consistently conveyed the message to consumers throughout the United States that TripleFlex, with its "Triple-Ingredient" formula will provide "Triple-Action" and "Triple-Benefit[s]" simply by taking the recommended number of tablets each day. According to Defendant, TripleFlex improves joint "comfort, mobility and flexibility" by replenishing the body with critical nutrients needed for daily maintenance and renewal of the joints. Defendant's renewal and rejuvenation representations are false, misleading and deceptive.

12. Defendant represents that the claimed health benefits are achieved through the combination of ingredients in the Products. The primary active ingredients in all the TripleFlex products are glucosamine hydrochloride and chondroitin sulfate. Glucosamine is an amino sugar that the body produces and distributes in cartilage and other connective tissue. On its packaging and labeling, Defendant defines glucosamine and elaborates on its benefits:

Glucosamine: Basic building block for maintaining joint cartilage and helps to maintain structural integrity of your joints. Beneficial for joint elasticity and flexibility. Helps promote mobility and support.

1 There is no competent and reliable scientific evidence that taking glucosamine—let
2 alone through oral administration—results in the body metabolizing it into something
3 that helps to maintain joint cartilage, promote mobility and support, or maintains
4 structural integrity of the joints. In fact, clinical cause and effect studies have found
5 no causative link between glucosamine hydrochloride supplementation and joint
6 renewal or rejuvenation.

7 13. Chondroitin sulfate is a complex carbohydrate found in the body's
8 connective tissues. On its packaging and labeling, Defendant defines chondroitin as
9 follows:

10 **Chondroitin:** A naturally occurring nutrient found in the
connective tissues, which lubricates and cushions your joints.

11 There is no competent and reliable scientific evidence that taking chondroitin—let
12 alone through oral administration—results in the body metabolizing it into something
13 that assists in lubricating and cushioning joints. Clinical cause and effect studies have
14 found no causative link between chondroitin supplementation and joint renewal or
15 rejuvenation.

16 14. The TripleFlex products also contain lesser quantifies of other
17 ingredients. TripleFlex Double Strength and also contains methylsulfonylmethane
18 ("MSM"), an organic sulfur compound found in fruits, corn, tomatoes, tea, coffee, and
19 milk. Defendant defines MSM on its Products' packaging and labeling as follows:
20 "**MSM:** A source of dietary sulfur that enriches the mobility of your joints" (emphasis
21 in original. Clinical cause and effect studies have found no causative link between
22 MSM and joint renewal or rejuvenation.

23 15. Hyaluronic acid, a component of synovial fluid found in the fluids of the
24 eyes and joints is also found in Defendant's TripleFlex Triple Strength and TripleFlex
25 Triple Strength LSG products. Defendant claims on its Product labeling and
26 packaging that studies show hyaluronic acid "provides lubrication to the joints." There
27 is no competent scientific evidence that taking any of these ingredients—let alone
28

1 through oral administration—results in the body metabolizing it into something that
2 lubricates joints. Clinical cause and effect studies have found no causative link
3 between hyaluronic acid supplementation and joint renewal or rejuvenation.

4 16. TripleFlex Triple Strength and TripleFlex Triple Strength LSG also
5 contain white willow bark. According to the Products’ labeling and packaging, white
6 willow bark “helps relieve joint discomfort in as little as 7 days.” Clinical cause and
7 effect studies have found no causative link between white willow bark and joint
8 renewal or rejuvenation.

9 17. TripleFlex 50+, which Defendant represents is specially formulated for
10 adults over 50 years of age, contains calcium and vitamin D. The Product labeling
11 and packaging defines calcium and vitamin D as follows:

12 **Calcium + Vitamin D:** this nutrient is essential for building
13 and maintaining strong bones and teeth, but it is also
14 important in many enzymatic reactions in the body. Vitamin
D has [been] shown to strengthen muscle.

15 There is no competent scientific evidence that taking any of these ingredients—let
16 alone through oral administration—results in the body metabolizing it into something
17 that helps improve joint mobility, flexibility or comfort. Clinical cause and effect
18 studies have found no causative link between vitamin D supplementation and joint
19 renewal or rejuvenation.

20 18. Even though several clinical cause and effect studies have found no
21 causative link between any of the primary active ingredients in the TripleFlex
22 products alone, or in combination, and without any scientifically valid confirmation
23 that TripleFlex is an effective joint treatment—let alone an effective treatment for *all*
24 joints in the human body, for adults of *all* ages and for *all* stages of joint disease—
25 Defendant prominently claims on the Products’ packaging and labeling that
26 TripleFlex, with its “Triple-Ingredient” formula, will reduce joint discomfort, increase
27 mobility and flexibility, and replenish critical nutrients for joint maintenance and
28

renewal. Front, back and side shots of a representative TripleFlex Triple Strength product label appear as follows:

FRONT



LEFT SIDE



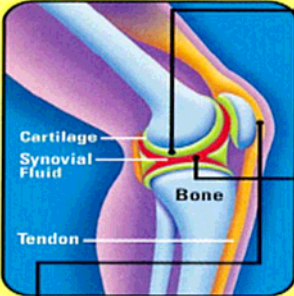
BACK

RIGHT SIDE

Nature Made

TRIPLE FLEX Comfort Mobility Flexibility†

Triple-Ingredient Triple-Action Triple-Benefit



Glucosamine: Basic building block for maintaining joint cartilage and helps to maintain structural integrity of your joints. Beneficial for joint elasticity and flexibility. Helps promote mobility and support†.

Chondroitin Complex: Chondroitin Complex contains Chondroitin Sulfate and White Willow Bark that helps relieve joint discomfort in as little as 7 days†.

Hyaluronic Acid: Studies show that Hyaluronic Acid provides lubrication to the joints†.

PROUD SPONSOR of the **ARTHRITIS FOUNDATION®**

Nature Made®, the maker of Triple Flex®, is proud to support the Arthritis Foundation's efforts to help people take control of arthritis. For information about arthritis, contact the Foundation at 800-565-4045.

† These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

SUGGESTED USE: For adults use only. Take two caplets daily with food. Caplets can be taken together or at different times during the day. Keep bottle tightly closed. Store in a cool, dry place, out of reach of children. Do not use if imprinted seal under cap is broken or missing.

CAUTION: Not for use by children or teenagers. Do not use if pregnant or nursing or sensitive to aspirin. If you are taking blood thinning or other medications, consult your health care professional before using this product. Discontinue use two weeks prior to surgery, or if upset stomach occurs.

Supplement Facts

Serving Size 2 caplets
Servings Per Container 60

Amount Per Serving	% Daily Value
Sodium 5 mg	Less than 1%
Glucosamine Hydrochloride 1.5 g (1500 mg)	*
Chondroitin Complex 290 mg (Chondroitin Sulfate, White Willow Bark Extract (Salicin) (<i>Salix alba</i>))	*
Hyaluronic Acid 10 mg	*

*Daily Value not established.

INGREDIENTS: Glucosamine Hydrochloride, White Willow Bark Extract, Cellulose Gel, Croscarmellose Sodium, Povidone, Sodium Chondroitin Sulfate, Polyvinyl Alcohol, Glyceryl Behenate, Silicon Dioxide, Polyethylene Glycol, Red 40 Lake, Talc, Magnesium Stearate, Sodium Hyaluronate, Triethyl Citrate, Titanium Dioxide (Artificial Color), Polysorbate 80, Blue 2 Lake. **CONTAINS:** Shellfish (Shrimp & Crab).
Distributed by: **Nature Made Nutritional Products**, Mission Hills, CA 91346-9606, U.S.A.
1-800-276-2878 • www.TripleFlex.com

**No Artificial Flavors • No Preservatives
No Yeast or Gluten**

TripleFlex caplets are made to Nature Made's guaranteed purity and potency standards.
♦Valid only for U.S. and Puerto Rico residents.
** In 2 caplets

19. Defendant did not and does not have competent and reliable scientific evidence that any of the ingredients in its TripleFlex products taken alone or in combination are effective at helping provide joint renewal or rejuvenation. Numerous clinical studies have resulted in a finding of no efficacy for the ingredients in the TripleFlex products and the prevention of joint degeneration or relief from joint discomfort. Defendant's renewal and rejuvenation representations are false and misleading and reasonably likely to deceive the average consumer.

The Impact of Defendant's Wrongful Conduct.

20. Despite the lack of competent scientific evidence and the presence of several clinical studies that have found no causative link between the ingredients in the TripleFlex products and joint renewal or rejuvenation, Defendant continues to

1 unequivocally claim that its TripleFlex products are an effective treatment for
2 improving joint pain, comfort and mobility in all adults.

3 21. As the manufacturer and distributor of the TripleFlex products,
4 Defendant possesses specialized knowledge regarding the content and effects of the
5 ingredients contained in its TripleFlex products and is in a superior position to learn
6 of the effects—and has learned of the effects—its Products have on consumers.

7 22. Specifically, Defendant affirmatively misrepresented that the TripleFlex
8 products, with their “Triple-Ingredient” formula, improve joint “comfort, mobility
9 and flexibility.” Having made these affirmative misrepresentations, Defendant failed
10 to disclose that well-conducted, clinical cause-and-effect studies have found no
11 causative relationship between the product ingredients and the prevention of joint
12 degeneration or relief from joint discomfort and Defendant has no competent and
13 reliable scientific evidence that its TripleFlex products are effective in helping
14 provide joint renewal or rejuvenation as represented.

15 23. Notwithstanding these deceptive representations and material
16 omissions, Defendant conveyed and continues to convey one uniform message:
17 TripleFlex, with its unique “Triple-Ingredient” formula, improves joint “comfort
18 mobility and flexibility” for all joints in the human body, for adults of all ages and for
19 all stages of joint disease.

20 24. Plaintiff and Class members have been and will continue to be deceived
21 or misled by Defendant’s deceptive joint renewal and rejuvenation representations.
22 Plaintiff purchased and consumed the Product during the Class period and in doing
23 so, read and considered the Product label and based her decision to buy the Product
24 on the joint renewal and rejuvenation representations. Defendant’s deceptive
25 representations and omissions were a material factor in influencing Plaintiff’s
26 decision to purchase and consume the Product. Plaintiff would not have purchased the
27 Product had she known that Defendant’s representations were false and misleading,
28 that Defendant did not possess competent and reliable scientific evidence to support

its joint renewal and rejuvenation representations, and that clinical cause-and-effect studies have found no causative link between the ingredients in TripleFlex and joint renewal or rejuvenation.

25. As a result, Plaintiff and the Class members have been damaged in their purchases of these Products and have been deceived into purchasing Products that they believed, based on Defendant's representations, were proven to be effective in improving joint "comfort, mobility, and flexibility" when, in fact, they are not.

26. Defendant, by contrast, reaped enormous profits from its false marketing and sale of these Products.

CLASS DEFINITION AND ALLEGATIONS

27. Plaintiff brings this action on behalf of herself and all others similarly situated pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class:

All persons who, within the applicable statute of limitations, purchased TripleFlex products³ in the United States.

Excluded from the Class are Defendant, its parents, subsidiaries, affiliates, officers and directors, and those who purchased TripleFlex for the purpose of resale.

28. Members of the Class are so numerous and geographically dispersed that joinder of all Class members is impracticable. Plaintiff is informed and believes, and on that basis alleges, that the proposed Class contains many thousands of members. The precise number of class members is unknown to Plaintiff.

29. Common questions of law and fact exist as to all members of the Class and predominate over questions affecting only individual Class members. The common legal and factual questions include, but are not limited to, the following:

- Whether the claims discussed herein that Defendant made about

³ The "TripleFlex products" include: TripleFlex Triple Strength; TripleFlex 50+; TripleFlex Triple Strength LSG; and TripleFlex Double Strength.

1 its Products were or are misleading, or reasonably likely to deceive;

- 2 • Whether Defendant's alleged conduct violates public policy;
- 3 • Whether the alleged conduct constitutes violations of the laws
- 4 asserted herein;
- 5 • Whether Defendant engaged in false and misleading advertising;
- 6 • Whether Plaintiff and Class members have sustained monetary
- 7 loss and the proper measure of that loss;
- 8 • Whether Plaintiff and Class members are entitled to restitution,
- 9 disgorgement of Defendant's profits, declaratory and/or injunctive relief; and
- 10 • Whether Plaintiff and Class members are entitled to an award of
- 11 punitive and/or compensatory damages.

12 30. Plaintiff's claims are typical of the claims of the members of the Class
 13 because, *inter alia*, all Class members were injured through the uniform misconduct
 14 described above, were subject to Defendant's deceptive joint renewal and
 15 rejuvenation representations accompanying each and every box of the TripleFlex
 16 products which include the same primary active ingredients – glucosamine
 17 hydrochloride and chondroitin sulfate – and several other common ingredients.
 18 Plaintiff is advancing the same claims and legal theories on behalf of herself and all
 19 members of the Class.

20 31. Plaintiff will fairly and adequately represent and protect the interests of
 21 the members of the Class. Plaintiff has retained counsel competent and experienced
 22 in both consumer protection and class litigation, and Plaintiff intends to prosecute this
 23 action vigorously. Plaintiff has no adverse or antagonistic interests to those of the
 24 Class.

25 32. A class action is superior to other available methods for the fair and
 26 efficient adjudication of this controversy. The expense and burden of individual
 27 litigation would make it impracticable or impossible for proposed Class members to
 28 prosecute their claims individually. It would thus be virtually impossible for the

1 Class, on an individual basis, to obtain effective redress for the wrongs done to them.
 2 Furthermore, even if Class members could afford such individualized litigation, the
 3 court system could not. Individualized litigation would create the danger of
 4 inconsistent or contradictory judgments arising from the same set of facts.
 5 Individualized litigation would also increase the delay and expense to all parties and
 6 the court system from the issues raised by this action. By contrast, the class action
 7 device provides the benefits of adjudication of these issues in a single proceeding,
 8 economies of scale, and comprehensive supervision by a single court, and presents no
 9 unusual management difficulties under the circumstances here.

10 33. In the alternative, the Class also may be certified because Defendant has
 11 acted or refused to act on grounds generally applicable to the Class thereby making
 12 appropriate final declaratory and/or injunctive relief with respect to the members of
 13 the Class as a whole.

14 34. Plaintiff seeks preliminary and permanent injunctive and equitable relief
 15 on behalf of the entire Class, on grounds generally applicable to the entire Class, to
 16 enjoin and prevent Defendant from engaging in the acts described herein, and
 17 requiring Defendant to provide full restitution to Plaintiff and Class members.

18 35. Unless a Class is certified, Defendant will retain monies received as a
 19 result of its conduct that were taken from Plaintiff and Class members. Unless a
 20 Class-wide injunction is issued, Defendant will continue to commit the violations
 21 alleged, and the members of the Class and the general public will continue to be
 22 misled.

23 **COUNT I**

24 **Violation of Business & Professions Code §17200, *et seq.***

25 36. Plaintiff repeats and re-alleges the allegations contained in the
 26 paragraphs above, as if fully set forth herein.

27 37. Plaintiff Lorean Barrera brings this claim individually and on behalf of
 28 the Class.

1 38. As alleged herein, Plaintiff has suffered injury in fact and lost money or
2 property as a result of Defendant's conduct because she purchased TripleFlex in
3 reliance on Defendant's' joint renewal and rejuvenation representations detailed
4 above, but did not receive a product that supports joint renewal or rejuvenation.

5 39. The Unfair Competition Law, Business & Professions Code §17200, *et*
6 *seq.* ("UCL"), prohibits any "unlawful," "fraudulent" or "unfair" business act or
7 practice and any false or misleading advertising. In the course of conducting
8 business, Defendant committed unlawful business practices by, *inter alia*, making the
9 representations (which also constitutes advertising within the meaning of §17200) and
10 omissions of material facts, as set forth more fully herein, and violating Civil Code
11 §§1572, 1573, 1709, 1711, 1770 and Business & Professions Code §§17200, *et seq.*,
12 17500, *et seq.*, and the common law.

13 40. Plaintiff and the Class reserve the right to allege other violations of law,
14 which constitute other unlawful business acts or practices. Such conduct is ongoing
15 and continues to this date.

16 41. Defendant's actions also constitute "unfair" business acts or practices
17 because, as alleged above, *inter alia*, Defendant engaged in false advertising,
18 misrepresented and omitted material facts regarding its TripleFlex product labels and
19 packaging, and thereby offended an established public policy, and engaged in
20 immoral, unethical, oppressive, and unscrupulous activities that are substantially
21 injurious to consumers.

22 42. As stated in this Complaint, Plaintiff alleges violations of consumer
23 protection, unfair competition and truth in advertising laws, resulting in harm to
24 consumers. Defendant's acts and omissions also violate and offend the public policy
25 against engaging in false and misleading advertising, unfair competition and
26 deceptive conduct towards consumers. This conduct constitutes violations of the
27 unfair prong of Business & Professions Code §17200, *et seq.*

28 43. There were reasonably available alternatives to further Defendant's

1 legitimate business interests, other than the conduct described herein.

2 44. Business & Professions Code §17200, *et seq.*, also prohibits any
3 “fraudulent business act or practice.”

4 45. Defendant’s actions, claims, nondisclosures and misleading statements,
5 as more fully set forth above, were also false, misleading and/or likely to deceive the
6 consuming public within the meaning of Business & Professions Code §17200, *et*
7 *seq.*

8 46. Plaintiff and other members of the Class have in fact been deceived as a
9 result of their reliance on Defendant’s material representations and omissions, which
10 are described above. This reliance has caused harm to Plaintiff and other members of
11 the Class who each purchased Defendant’s TripleFlex products. Plaintiff and the other
12 Class members have suffered injury in fact and lost money as a result of these
13 unlawful, unfair, and fraudulent practices.

14 47. As a result of its deception, Defendant has been able to reap unjust
15 revenue and profit.

16 48. Unless restrained and enjoined, Defendant will continue to engage in
17 the above-described conduct. Accordingly, injunctive relief is appropriate.

18 49. Plaintiff, on behalf of herself and all others similarly situated, and the
19 general public, seeks restitution and disgorgement of all money obtained from
20 Plaintiff and the members of the Class collected as a result of unfair competition, an
21 injunction prohibiting Defendant from continuing such practices, corrective
22 advertising and all other relief this Court deems appropriate, consistent with Business
23 & Professions Code §17203.

24 **COUNT II**

25 **Violations of the Consumers Legal Remedies Act – Civil Code §1750 *et seq.***

26 50. Plaintiff repeats and re-alleges the allegations contained in the
27 paragraphs above, as if fully set forth herein.

28 51. Plaintiff Lorean Barrera brings this claim individually and on behalf of

1 the Class.

2 52. This cause of action is brought pursuant to the Consumers Legal
3 Remedies Act, California Civil Code §1750, *et seq.* (the “Act”). Plaintiff is a
4 consumer as defined by California Civil Code §1761(d). TripleFlex is a “good”
5 within the meaning of the Act.

6 53. Defendant violated and continues to violate the Act by engaging in the
7 following practices proscribed by California Civil Code §1770(a) in transactions with
8 Plaintiff and the Class which were intended to result in, and did result in, the sale of
9 the TripleFlex products:

10 (5) Representing that [TripleFlex has] . . . approval, characteristics, . . . uses
11 [and] benefits . . . which [it does] not have

12 * * *

13 (7) Representing that [TripleFlex is] of a particular standard, quality or
14 grade . . . if [it is] of another.

15 * * *

16 (9) Advertising goods . . . with intent not to sell them as advertised.

17 * * *

18 (16) Representing that [TripleFlex has] been supplied in accordance with a
19 previous representation when [it has] not.

20 54. Defendant violated the Act by representing and failing to disclose
21 material facts on the TripleFlex product labels and packaging, as described above,
22 when it knew, or should have known, that the representations were unsubstantiated,
23 were contrary to several clinical cause and effect studies finding the ingredients in all
24 TripleFlex products to be inefficacious, were false and misleading and that the
25 omissions were of material facts they were obligated to disclose.

26 55. Pursuant to §1782(d) of the Act, Plaintiff and the Class seek a court
27 order enjoining the above-described wrongful acts and practices of Defendant and for
28 restitution and disgorgement.

64. As a result of Defendant's breach of its contract, Plaintiff and the Class have been damaged in the amount of the price of the Products they purchased.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment:

- A. Certifying the class as requested herein;
- B. Awarding Plaintiff and the proposed Class members damages;
- C. Awarding restitution and disgorgement of Defendant's revenues to Plaintiff and the proposed Class members;
- D. Awarding declaratory and injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein, and directing Defendant to identify, with court supervision, victims of its conduct and pay them restitution and disgorgement of all monies acquired by Defendant by means of any act or practice declared by this Court to be wrongful;
- E. Awarding statutory and punitive damages, as appropriate;
- F. Ordering Defendant to engage in a corrective advertising campaign;
- G. Awarding attorneys' fees and costs; and
- H. Providing such further relief as may be just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

DATED: October 11, 2011

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
ELAINE A. RYAN (*To be admitted Pro Hac Vice*)

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice list.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 11, 2011.

By: s/ Patricia N. Syverson
Patricia N. Syverson

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